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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,126	06/02/2005	David A Eves	GB030035	8390
24737 7590 07/10/2007 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
			EXAMINER WARREN, DAVID S	
			ART UNIT 2837	PAPER NUMBER
			MAIL DATE 07/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/537,126

Applicant(s)

EVES ET AL.

Examiner

David S. Warren

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 and 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/2/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 6 – 9 and 13 – 17 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 4, and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1 and 10, the term “harmonious” is deemed to be subjective. What one person may find “harmonious” others may not agree. Clarification is required.

4. Regarding claim 4, the Examiner maintains that, in some ways, all musical keys are related. For example, a chord in the key of C# is related by tritone substitution to the key of C. The Applicant is requested to clearly define the relation (e.g., relative minor, etc.).

Information Disclosure Statement

5. The information disclosure statement filed June 6, 2005, fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.
6. The Examiner believes that the copies of two Great Britain documents (229940 and 303970) are in error as the subject matter does not appear related. The Applicant is requested to either supply correct documents or verify that the documents in the instant file are, in fact, correct. The document to Cliff appears to be correct.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1 – 5 and 10 – 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Shteyn et al. (6,933,432). Regarding claims 1 and 10, Shteyn discloses

the use of receiving a user preference (see Shteyn's claim 25), analyzing a plurality of audio signals to extract inherent features (see the first sentence of paragraph four in col. 6), ordering, independently of user involvement, into a sequence at least two audio signals (see paragraph bridging cols. 6 and 7). Shteyn's "musically consistent transition between songs" (col. 2, lines 24 – 25) is deemed to be synonymous with Applicant's "harmonious" sequence (see §112 rejection supra). Regarding claims 2 and 11, see last sentence of paragraph 4, col. 6). Regarding claim 3, Shteyn shows the use of extracted musical features, see col. 6, lines 52 – 54 and 60 – 64 and col. 8, lines 50 – 52. Regarding claim 4, Shteyn's use of "chord patterns" is synonymous with Applicant's "related musical keys" since as stated supra (see the §112 rejection), to this Examiner, all musical keys are somehow related. Regarding claim 5, Shteyn teaches songs such as "rock" songs, "oldies," or "classics." The use of the equal tempered scale has been used in common practice since the time of Bach. The Examiner maintains that all "rock" songs and "oldies" utilize the equal tempered scale. In other words, the equal tempered scale is the standard temperament in western music for the past 200 years. Regarding claim 12, Shteyn shows the use of a processor (fig. 1), the ability to input songs (i.e., input audio) and to store and to receive audio is inherent (i.e., for the music library to contain songs, the system must have some method to "receive" these songs).

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1 – 5 and 10 – 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Sone (6,066,792). Regarding claims 1 and 10, Sone discloses the use of receiving a user preference (col. 4, third paragraph), analyzing a plurality of audio signals (col. 4, fourth paragraph, “processing” and “selecting” are synonymous with Applicant’s “analyzing”), and ordering into a sequence (col. 5, lines 1 – 7; note Sone uses “harmonious” as a criteria for ordering audio segments). Regarding claims 2 and 11, Sone discloses the using user’s preferences (col. 4, paragraph 3). Regarding claim 3, see col. 4, line 67. Regarding claim 4, see sentence bridging cols. 5 and 6, (i.e., “music elements [such as chords]...resemble each other”). Regarding claim 5, the use of the equal tempered scale is deemed to be inherent since this tuning system has been the standard temperament used in western music for the past 200 years – certainly a karaoke device would use such a system. Regarding claim 12, Sone shows elements 102, 103, and 150 for inputting, receiving, and storing audio data.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-2837. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dsw



DAVID S. WARREN